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CITY OF PORTSMOUTH *v.* PORTSMOUTH & NORFOLK CORP.

Jan. 24, 1918. Rehearing Denied March 21, 1918.

[95 S. E. 278.]

1. **Municipal Corporations (§ 333\*)—Grant of Franchise—Requirement of Check—Forfeiture.**—The requirement of a city ordinance, authorizing the granting of a franchise for lighting the streets, that all bidders should accompany their bids with a certified check, payable to the city treasurer, in the sum of \$5,000, to be forfeited to the city as liquidated damages for failure to comply with the bid and execute the contract, if awarded, was not violative of Const. § 125 (Code 1904, p. ccxli), providing that before granting any franchise or privilege for years, except for a bridge or railroad, the municipality shall first, after due advertisement, receive bids, etc., or Code 1904, § 1033f, providing that the person or corporation to whom the franchise is awarded, by competing bids or otherwise, shall first execute bond, etc.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 208.]

2. **Municipal Corporations (§ 337\*)—Forfeitures—Bidder for Street Lighting Franchise.**—The rule that courts incline against forfeitures has no application to such a case.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 209.]

3. **Municipal Corporations (§ 362 (2)\*)—Extension of Time to Bidder for Municipal Lighting—Illegality of Ordinance—"Amendment of Franchise."**—A city ordinance, extending additional time to a bidder for a street lighting franchise for supplying municipal lighting, was not an "amendment" of the original franchise, therefore illegal, for noncompliance with Code 1904, § 1033f, par. 5, being simply an extension of time on the contract within which to furnish municipal lighting; the city being within its rights in granting the indulgence.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Amendment. For other cases, see 10 Va.-W. Va. Enc. Dig. 209.]

Error to Circuit Court of City of Portsmouth.

Action in assumpsit by the Portsmouth & Norfolk Corporation against the City of Portsmouth. To review a judgment for plaintiff, defendant brings error. Reversed, and judgment entered for defendant.

*John W. Happer*, of Portsmouth, for plaintiff in error.

*R. R. Hicks*, of Norfolk, for defendant in error.

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.